

## CHAPTER 22

### BOARD OF ZONING APPEALS

#### Sec. 22-1. Creation, Appointment, Term, etc.

Upon the effective date of this Ordinance, there shall be created a Board of Zoning Appeals, which shall consist of five (5) residents appointed by the Circuit Court of the City of Hampton, as provided by law. Their terms of office shall be for five (5) years each, except that the original appointments shall be made for such terms that the term of one member shall expire each year. The Secretary of the Board shall notify the Court at least thirty (30) days in advance of the expiration of any term of office, and shall also notify the Court promptly if any vacancy occurs. Appointments to fill vacancies shall be only for the unexpired portion of the term. Members may be reappointed to succeed themselves. Members of the Board shall hold no other public office in the City except that one may be a member of the Planning Commission. A member whose term expires shall continue to serve until his successor is appointed and qualifies.

#### Sec. 22-2. Officers.

The Board shall elect from its own membership a Chairman and Vice-Chairman who shall serve annual terms as such, and may succeed themselves. The Board shall appoint a Secretary who shall not be a member of the Board.

#### Sec. 22-3. Quorum.

For the conduct of any hearing and taking of any action, a quorum shall be not less than a majority of all members of the Board.

#### Sec. 22-4. Procedures and Records.

The Board may make, alter, and rescind rules and forms for its procedures, consistent with ordinances of the City and general laws of the Commonwealth.

The Board shall keep a full public record of its proceedings, including the recorded vote of each member upon each question, and shall submit a report of its activities to the Council at least once each fiscal year.

#### Sec. 22-5. Compensation.

Members of the Board shall receive such compensation as may be established by the City Council.

Sec. 22-6. Meetings.

Meetings of the Board shall be held at the call of the Chairman and at such other times as the Board may determine. The Chairman, or in his absence the acting Chairman, may administer oaths and compel attendance of witnesses. All meetings of the Board shall be open to the public.

Sec. 22-7. Powers and Duties.

The Board of Zoning Appeals shall have the following powers and duties:

- (a) To hear and decide appeals from any order, requirement, decision, or determination made by an administrative office in the administration or enforcement of the Zoning Ordinance.
- (b) To authorize, upon appeal or original application, in specific cases such variance from the terms of the Ordinance as will not be contrary to the public interest, when, owing to special conditions, a literal enforcement of the provisions will result in unnecessary hardship; provided that the spirit of the Ordinance shall be observed and substantial justice done, as follows:

When a property owner can show that his property was acquired in good faith and where by reason of the exceptional narrowness, shallowness, size or shape of a specific piece of property at the time of the effective date of this Ordinance, or where by reason of exceptional topographic conditions or other extraordinary situation or condition of such piece of property, or of the use or development of property immediately adjacent thereto, the strict application of the terms of the Ordinance would effectively prohibit or unreasonably restrict the use of the property, or where the Board is satisfied, upon the evidence heard by it, that the granting of such variance will alleviate a clearly demonstrable hardship approaching confiscation, as distinguished from a special privilege or convenience sought by the applicant, provided that all variances shall be in harmony with the intended spirit and purpose of the Ordinance. No such variance shall be authorized by the Board unless it finds:

- (1) That the strict application of the Ordinance would produce undue hardship.
- (2) The such hardship is not shared generally by other properties in the same zoning district and the same vicinity.
- (3) That the authorization of such variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.
- (4) That any delinquent real estate taxes owed to the City of Hampton on the subject property have been paid, with the exception of applications sponsored by the City of Hampton.  
(Amended 1/8/97)

No such variance shall be authorized except after public notice thereof has been given by the publication once a week for two (2) successive weeks in some newspaper having general circulation in the city. Such notice shall state where copies of the proposed variance may be examined. The notice shall also specify the time and place of hearing at which persons affected may appear and present their views, not less than six (6) days nor more than twenty one (21) days after the second advertisement shall appear in such newspaper.

When a variance involves twenty five (25) or fewer parcels of land, then, in addition to the advertising required above, written notice shall be given by the Board, at least five (5) days before the hearing to the owner or owners, their agent or the occupant, of each parcel involved; to the owners, their agent or the occupant, of all abutting property and property immediately across the street or road from the property affected; and if any portion of the affected property is within an R-OS Subdivision, then to such incorporated property owners' association within the R-OS Subdivision that has members owning property located within two thousand (2,000) feet of the affected property. In the case of a condominium or cooperative, the written notice may be mailed to the unit owners' association or the proprietary lessees' association, respectively, in lieu of each individual unit owner. Notice shall also be given to the owner, his agent or the occupant, of all

abutting property and property immediately across the street or road from the property affected which lies in an adjoining county or municipality. Notice sent by first class mail to the last known address of such owner as shown on the current real estate tax assessment records shall be deemed adequate. (8/14/96)

When a variance involves more than twenty five (25) parcels of land, then, in addition to the advertising required above, written notice shall be given by the Board, at least five (5) days before the hearing to the owner, owners, or their agent of each parcel of land involved. Notice sent by first class mail to the last known address of such owner as shown on the current real estate tax assessment records shall be deemed adequate. (8/14/96)

When a proposed variance would increase by greater than fifty percent (50%) the bulk or height of an existing or proposed building on a parcel located within one half (1/2) mile of a boundary of an adjoining county or municipality, then in addition to the advertising and written notification required above, written notice shall also be given by the Board, at least ten (10) days before the hearing to the chief administrative officer of such adjoining county or municipality. (8/14/96)

A party's actual notice of, or active participation in, the public hearing required herein shall waive the right of that party to challenge the validity of the proceeding due to the failure of the party to receive the written notice required herein. (8/14/96)

No variance shall be authorized unless the Board finds that the condition or situation of the property concerned or the intended use of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the Ordinance.

In authorizing a variance, the Board may impose such conditions regarding the location, character, and other features of the proposed structure or use as it may deem necessary in the public interest, and may require a guarantee or bond to insure that the conditions imposed are being, and will continue to be, complied with.

- (c) To hear and decide appeals from the decision of the Zoning Administrator. No such appeal shall be heard except after notice and hearing as provided by Section 22-7(b) above.
- (d) To hear and decide applications for interpretation of the district map where there is any uncertainty as to the location of a district boundary. After notice to the owners of the property affected by any such question, and after public hearing with notice as required by Section 22-7(b), the Board may interpret the map in such way as to carry out the intent and purpose of the Ordinance for the particular section or district in question. The Board shall not have the power to change substantially the locations of district boundaries as established by ordinance.
- (e) No provision of this chapter shall be construed as granting the Board the power to rezone property.
- (f) To hear and decide applications for such Special Exceptions as may be authorized in the Ordinance. The Board may impose such conditions relating to the use for which a permit is granted as it may deem necessary in the public interest, and may require a guarantee or bond to insure that the conditions imposed are being, and will continue to be, complied with.

No such Special Exception may be granted except after notice and hearing as provided by Section 22-7(b). Unless the application is sponsored by the City of Hampton, the Board shall not grant any Special Exception until any delinquent real estate taxes owed to the City of Hampton on the subject property have been paid. (Amended 1/8/97)

Sec. 22-8.           Applications for Special Exceptions and Variances.

Applications for special exceptions and variances may be made by any property owner, tenant, government official, department, board, or bureau. Such application shall be made to the Zoning Administrator in accordance with rules adopted by the Board. The application and accompanying maps, plans, or other information shall be transmitted promptly to the Secretary of the Board, who shall place the matter on the docket to be acted upon by the Board. No such special exceptions or variances shall be authorized except after notice and hearing as required by Section 22-7(b). The Zoning Administrator shall also transmit a copy of the

application to the Planning Commission which may send a recommendation to the Board or appear as a party at the hearing.

Sec. 22-8.1. Reconsideration Upon Denial.

Upon denial of an application for either a special exception or variance, the Board shall not reconsider substantially the same application for a period of one (1) year, except by motion of the Board.

Sec. 22-9. Appeals to the Board.

An appeal to the Board may be taken by any person or taxpayer aggrieved or by any officer, department, board, or bureau of the City affected by any decision of the Zoning Administrator. Such appeal shall be taken within thirty (30) days after the decision appealed from by filing with the Zoning Administrator, and with the Board, a notice of appeal specifying the grounds thereof. The Zoning Administrator shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the Zoning Administrator certified to the Board that by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order granted by the Board or by a court of record, on application and on notice to the Zoning Administrator, and for good cause shown. (8/14/96)

Sec. 22-10. Procedure on Appeal.

The Board shall fix a reasonable time for the hearing of an application or appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the same within sixty (60) days. In exercising its powers, the Board may reverse or affirm, wholly or partly, or may modify an order, requirement, decision, or determination appealed from. The concurring vote of three (3) members shall be necessary to reverse any order, requirements, decision, or determination of an administrative officer, or to decide in favor of the applicant on any matter upon which it is required to pass under the Ordinance, or to effect any variance from the Ordinance. The Board shall keep minutes of its proceedings and other official actions which shall be filed in the office of the Board and shall be public records.

Sec. 22-11. Proceedings to Prevent Construction of Building in Violation of Zoning Ordinance.

Where a building permit has been issued and the construction of the building for which such permit was issued is subsequently sought to be prevented, restrained, corrected, or abated as a violation of the Zoning Ordinance, by suit filed within fifteen (15) days after the start of construction by a person who had no actual notice of the

issuance of the permit, the court may hear and determine the issues raised in the litigation, even though no appeal was taken from the decision of the administrative officer to the Board of Zoning Appeals.

Sec. 22-12.        Relation of Ordinance to Other Laws.

Whenever the regulations made under the Zoning Ordinance require a greater width or size of yards, courts, or other open spaces; require a lower height of building or less number of stories; require a greater percentage of lot to be left unoccupied; or impose other higher standards than area required in any other statute or local ordinance or regulation, the provisions of the Zoning Ordinance shall govern. Whenever the provisions of any other statute or local ordinance or regulations require a greater width or size of yards, courts or other open spaces; require a lower height of building or less number of stories; require a greater percentage of lot to be left unoccupied; or impose other higher standards than are required by this Ordinance, the provisions of such statute or local ordinance or regulation shall govern.

Sec. 22-13.        Fees (7/11/01)

Every application that comes before the Board of Zoning Appeals, whether an appeal of the Zoning Administrator's decision, a variance or a special exception, shall be accompanied by the nonrefundable fee from the following schedule. The sum shall be payable to the City of Hampton, incidental to reviewing, publishing, and reporting the application:

- (1) seventy five dollars (\$75.00) for any application that is associated with a current or proposed single family residential use of property; and
- (2) two hundred dollars (\$200.00) for any application that is associated with a current or proposed use of property that is not single family residential.